

IDAPA 37.03.09
Negotiated Rule Making
June 29-30, 2006

Negotiated Rule Making commenced on Thursday, June 29, at 9 AM MDT. This meeting was conducted using the University of Idaho's teleconferencing system, and stakeholders participated from locations in Twin Falls (two participants), Coeur d'Alene (three participants), Idaho Falls (three participants), and Boise (fifteen participants). The complete meeting was recorded, and is summarized below.

- IDWR staff and its subcontractor introduced themselves. Committee participants introduced themselves and each provided their expectations and goals for participating.
- A video tape entitled Water Well Basics was shown. The video provided information about construction of domestic water wells.
- The committee discussed previous stakeholder input on IDAPA rule 37.03.09 gathered during Phase 1 of the negotiated rulemaking process. The participants summarized some areas where the current rule could be clarified and strengthened.
- Well Siting
 - The committee discussed the purpose of siting requirements and noted that arbitrary distance isn't as critical as hydrologic communication. Septic fields could in fact be upgradient which would actually make the set distance MORE likely to create issues.
 - There was general agreement that vertical well seals may be more critical than setback distances.
 - There was general agreement that it would be good to resolve conflicts between Health Department requirements and well construction rules so the two did not conflict and cooperation was maximized.
- Sealing of Wells
 - Jim Rush, Rocky Mountain Environmental, presented information about leaking boreholes, capture zones of municipal wells, and possible cross-contamination.
 - Prof. Shawn Benner, BSU, presented information about arsenic contamination in the Treasure Valley. Tentatively, the data suggests that arsenic may be spread geographically across Ada and Canyon Counties due to leaking wells—because of inadequate seals, arsenic-contaminated water is spread vertically up and down across the aquifer and then laterally across the valley.
 - Committee members participated in a wide-ranging discussion about the nature of well seals. Discussions included:
 - what type and level of sealing is appropriate,
 - when and where problems occur,
 - what are the strengths and limitations of various methodologies and
 - how to best protect the resource without creating undue burdens on well owners and drillers.
 - There was general agreement that the minimum 18 feet seal is often inadequate and was never intended to be a default seal depth -- but in a competitive environment the minimum standard creates a baseline for low bids that may not be adequately protective and puts more conscientious drillers at a competitive disadvantage.
 - There was general agreement that sealing requirements are critically important to protecting the resource and that any revision to the rule should ensure the most appropriate and effective well seals are used.
- Enforcement
 - Licensed well drillers believe that enforcement after the well is complete is ineffective, and more personnel on the ground during drilling are critical.

Negotiations adjourned at 3 PM on Thursday and resumed via teleconference at 9 AM Friday, June 30.

- Seals and Enforcement (continued)
 - Committee members held different views. Some believed that there is adequate information now to require deeper, thicker seals across Idaho. Others believe that seal depth and thickness should be based specific geologic or geographic location where the well will be drilled.
 - There was a suggestion that different geologic areas may warrant different sealing requirements that could be specified in the rule. This might be a geographic or geologic area where specific, more rigorous standards are applied to resolve specific concerns or issues.
 - The group supported the concept of rules that level the playing field and promote (rather than discourage) more protective sealing practices during the bidding process.
- Abandonment
 - There was general agreement that wells that waste resources or contaminate groundwater should be abandoned, but the issue of property rights was identified as a challenge when a well could arguably be considered an asset to an individual while being a liability to the public trust. The rules will need to define a clear distinction between private benefits and the public trust.
 - One committee member pointed out that the current sealing requirement applied to a poorly constructed well is actually harmful because pouring bentonite down an open casing eliminates future access to the borehole but does not address the unsealed areas outside that casing which can be easily require 4 casing volumes to adequately seal.
 - A committee member suggested the concept of defining different abandonment standards depending on what standards the well was built to. Wells that are sealed correctly when installed could be abandoned more easily than wells that lack adequate sealing which should require perforating the casing at the bottom and pressure grouting to ensure a complete seal.
 - The committee supported the requirement that wells be abandoned only by licensed professionals.
- Well Maintenance
 - There was general agreement that correctly maintained wells are important to protect resources. There was general agreement that only qualified individuals should be allowed to work on or modify a well. Clarifying well owner and well driller responsibilities should be part of the revised standard.
- Disinfection
 - There was general agreement that disinfection should be required particularly in areas where ferrophillic bacteria are present.
 - A recommendation was made to use the National Groundwater Association manual as a reference.

Goals for Next Meeting

- Present draft (strawman) revisions to IDAPA 37.03.09 to stimulate discussion.
- Sealing Procedures and Protocols. Arrange a presentation by Idaho Ground Water Association (IGWA).
- Conflicts between minimum setbacks for septic tanks and vertical sealing requirements. Coordinate a presentation by Northern Region IDWR and McCarty Drilling.
- Propose and discuss a refined organization and structure of rules.